



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 2235 (Patron – Lingamfelter)

LD#: 13100098

Date: 8/2/2012

Topic: Use, display, or discharge of a firearm in commission of a felony

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
At least \$4,523,081 (163 beds)
- **Local Adult Correctional Facilities:**
None (\$0)
- **Adult Community Corrections Programs:**
None (\$0)

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

Currently, under § 18.2-53.1, using a firearm in the commission of certain felonies carries a three-year mandatory minimum term of incarceration for the first offense, while a second or subsequent offense carries a five-year mandatory term. These mandatory terms must run consecutively with any punishment received for the primary or triggering felony.

Under the proposal, the mandatory minimum for a first offense under § 18.2-53.1 would increase from three to five years, while the mandatory minimum for a second or subsequent offense would increase from five to eight years. The proposal also establishes an additional three-year mandatory term of imprisonment if the offender discharges a firearm in conjunction with a violation of § 18.2-53.1. This term would run consecutive to the five or eight-year mandatory minimum imposed for use of a firearm in commission of certain felonies.

Analysis:

According to the fiscal year (FY) 2010 and FY2011 Sentencing Guidelines database, 1,334 offenders were convicted of a completed felony for using a firearm during the commission of certain felonies, in violation of § 18.2-53.1. The firearm conviction was most frequently accompanied by a robbery or felony assault conviction.

Impact of Proposed Legislation:

State adult correctional facilities. By increasing existing mandatory minimum penalties and adding a new three-year mandatory minimum term for discharging a firearm during the commission of certain felonies, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth.

Increasing the mandatory minimum term from three to five years for a first violation of § 18.2-53.1 and from five to eight years for a second or subsequent conviction under this section is expected to increase

bed space needs by 163 beds by FY2019. However, the impact of adding a new mandatory minimum for discharging a firearm during certain offenses cannot be estimated because existing data do not contain sufficient detail to do so. Therefore, pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$4,523,081.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY14	FY15	FY16	FY17	FY18	FY19
0	0	1	43	134	163

Local adult correctional facilities. The proposal is not expected to impact the need for local-responsible (jail) beds, since offenders who are currently convicted of a completed offense under § 18.2-53.1 must be sentenced to a state-responsible (prison) term.

Adult community corrections resources. The proposal is not expected to increase the need for community corrections resources and will delay the need for services for some offenders affected by the proposal, as they will stay in prison longer prior to being released to the community.

Virginia's sentencing guidelines. Convictions under § 18.2-53.1 are covered by the sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. Since mandatory minimum terms do not apply to juvenile court adjudications, the Department of Juvenile Justice (DJJ) does not anticipate an impact upon juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. Since mandatory minimum terms do not apply to juvenile court adjudications, the Department of Juvenile Justice does not anticipate an impact on the bed space needs of juvenile detention facilities.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$4,523,081 for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2011.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in 2011.
3. Cost per prison bed was assumed to be \$27,688 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*

Assumptions relating to affected cases

1. Analysis includes all cases involving a completed offense under § 18.2-53.1 as the primary (most serious) offense in the case or as an additional offense to a more serious felony.

Assumptions relating to sentencing

1. The impact of the proposed legislation, which would be effective on July 1, 2013, is phased in to account for case processing time.
2. Offenders convicted of a completed offense (as the primary or an additional offense) meeting the criteria for the proposed mandatory minimums who were sentenced to less than the proposed mandatory minimums were

assumed to serve the mandatory minimum term specified in the proposal. If an offender was convicted of multiple counts, the mandatory minimum terms were assumed to run consecutively.¹

3. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in the Department of Corrections' facilities were earning sentence credits as of December 31, 2010. For felons serving a prison term for violent offenses, this rate was 10.5%.

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¹ Recent analysis revealed that, in 96.9% of cases, judges set multiple mandatory minimum sentences to run consecutively (*2010 Annual Report* of the Virginia Criminal Sentencing Commission).